

TAX PAK

NEWSLETTER BY
TOLA ASSOCIATES



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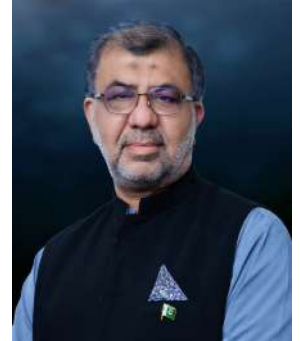
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EDITORIAL NOTE

Dear All,

I, on behalf of my entire team hope that all of you are doing well amid these uncertain and tough times. Through this platform, I would like to urge everyone to follow the Standard Operating Procedures published by the Federal and Provincial Government(s), and to maintain social distancing as much as possible. Remember, following these SOPs and the practice of



social distancing, is for our benefit only and is the only way we can maintain a relatively safe balance with our economy being unlocked. All of us owe a social duty to each other, which includes our families as well.

With that being said, I would like to welcome our readers to yet another edition of our monthly newsletter for the month of May 2020. Looking back on our journey, I would like to extend my warmest regards and deepest of appreciations to those readers who have been a part of this newsletter since its inception. For the people who have joined us on this journey recently, you should know that this newsletter comprises of important Notifications passed by the Tax and Corporate Authorities including, but not limited to, the Sindh Revenue Board ("SRB"), Federal Board of Revenue ("FBR") and Securities and Exchange Commission of Pakistan ("SECP"). Moreover, it also contains a landmark judgment passed by judicial forums, and a topic of the month.

In this edition, we have discussed a recent verdict passed by the Hon. Supreme Court of Pakistan which pertains to Section 4A of the Income Tax Ordinance 2001 ("the Ordinance"). Lastly, we end our newsletter with a discussion on the "Assessment of Tax" in our topic of the month segment.

You can visit our website www.tolaassociates.com, or download our mobile Application, in order to access previous versions of this newsletter, or more of our monthly publications. The aforesaid application can be downloaded from the links below:

1. <https://goo.gl/QDM4ZM> (IOS)
2. <https://goo.gl/LFiWyx> (Android)

It is requested that you may circulate this e-copy within your circle(s), as our primary aim is to benefit the masses. Feedback is always welcomed.

Ashfaq Tola - FCA

Editor in Chief

1. TAX NOTIFICATIONS/ CIRCULARS

i. AMENDMENTS IN THE SALES TAX RULES 2006

The FBR, vide SRO 353(I)/2020, dated 05th May 2020, has brought forth the following amendments in various rules and sub-rules of the captioned Rules:

a. A new rule 111A has been inserted, whereby, the following items are exempted from attachment and sale in recovery proceedings of sales tax:

- The necessary household items such as crockery, wearing apparels, etc. of the defaulter and his/her family members;
- In case of a farmer, his tools of agriculture, livestock, house and other building and other necessary stuff required for life;
- Books of accounts;
- Right to sue for damages;
- Any right of personal service;
- Stipends and gratuities for pensioner of the Government an amount received from notified pension fund and political pension;
- Funds established under the Provident Funds Act, 1925 provided that aforesaid Act so declared them not liable to attachment;
- Any allowance by government which is declared exempt in the Gazette; and
- Any expected or future rights to receive any amount.

b. A new sub-rule 4 has been inserted in Rule 150ZB, which requires restaurants, bakeries, caterers, and sweetmeat shops supplying prepared food and foodstuff to display prices and amount of tax separately in their menu cards for the end consumers.

c. A new sub-rule 4 has been inserted in Rule 150ZEA which requires retail outlets of textile and leather products, to display prices and amount of tax separately in price tags for the end consumers.

ii. INPUT ADJUSTMENT FOR OIL & GAS SECTOR-SPECIAL PROCEDURE NOTIFIED

As per Section 7 of the Sales Tax Act 1990 ("STA"), a person is entitled to deduct input tax paid or payable during a tax period from the output tax subject to

fulfilment of some conditions, including that the taxpayer shall hold a tax invoice in his name and bearing his registration number in respect of such supply. However, as per Section 7(4) of the STA, the Federal Government is empowered to override these principles by notifying other principles to allow input adjustments.

Joint ventures are the most common business arrangements for oil and gas companies engaging in exploration, appraisal, development and production operations, while companies in JVs maintain separate legal status. This sector therefore, faces difficulty in applying input adjustment rules as provided in Section 7. The FBR has now issued SRO 352(I)/2020 on 5th May 2020, through which the Federal Government has allowed a registered petroleum exploration and production company to deduct input tax from the output tax, such that in case of a bore-hole or well or gas field is run by a joint venture, the person acting as operator of the field may transfer the share of common input tax from the output tax to other registered persons in the JV by issuing a credit transfer note, depending upon respective share of the transferees in the JV, showing the amount of sales tax involved with zero sales value and the same shall be admissible for the purpose of input tax adjustment by the registered person to whom such credit transfer note is issued. The common input tax of the operator shall be reduced by the amount involved in such notes as issued by him.

iii. FBR - EXTENSION IN FILING OF RETURN FOR MONTH OF APRIL 2020

The FBR, had extended the date of payment of tax and submission of the Sales Tax and Federal Excise Return for the Tax Period April 2020, till 29th May 2020 for payment of tax and 30th May 2020 for submission of return, through letter C No. 9(11) ST-LPE/Misc/2016 dated 19th May 2020.

iv. FBR - EXTENSION IN FILING OF RETURN FOR MONTH OF MARCH 2020

The FBR, had extended the date of payment of tax and submission of Sales Tax and Federal Excise Return for the tax period of March 2020 till 27th May 2020 for

payment of tax and 30th May 2020 for submission of return, through letter no C.No.9(11) ST-LPE/Misc/2016 dated 15th May 2020.

v. EXTENSION IN FILING OF ANNEXURE H

The FBR, has extended the date of filing of Annexure-H for the tax periods July 2019 to December 2019 till 30 June 2020.

vi. SRB - EXTENSION IN FILING OF RETURN FOR APRIL 2020

The SRB, vide circular no. 04/2020 dated 21st May 2020, had extended the date of depositing of payment of tax for above tax period up to 29th May 2020, and the date of filling of the Return has been extended till 1st June 2020.

vii. FBR INCOME TAX REFUNDS UNDER PRIME MINISTER'S RELIEF PACKAGE COVID-19

The FBR, vide its internal memo 4(5) Rev Bud/2020/ dated 28th May 2020, has directed all the Chief Commissioners of Inland Revenue, to keep all refund orders under Section 170(4) of the ordinance ready in a draft form in IRIS and other formalities to be ready, so that as soon as the Finance Division sanctions the refund, the amount would be transferred to the respective Bank Accounts. It is also mentioned therein that there are discrepancies in information generated by PRAL and field formations which need to be addressed.

viii. EXTENSION IN ZERO RATING CERTIFICATES TILL JUNE 30 2020

The Ministry of Commerce (Textile Wing) has issued Office Memo no. 9(1) TID-12-RDA dated 1st May 2020, whereby, the zero-rated status granted by FBR to five sectors through certificates, that expires on 31st March 2020, has been extended till 30th June 2020. Now the taxpayers will not be required to apply for fresh certificate. It may be noted that this extension is only available to companies which were earlier granted zero rating status certificate.

2. CORPORATE NOTIFICATIONS/ CIRCULARS

i. SRO 414 (I)/2020 – RELIEF TO COMPANIES ENTITIES IAS 39

The SECP, vide SRO 414 dated 11th May 2020, has issued relief to the companies/ entities from IAS 39 which, pertains to the principle of Available for Sale Equity Instruments. The relief basically focuses on the recording of impairment losses in the financial statement(s).

Furthermore, the SECP has provided that the companies / entities who are willing to follow the requirements of IAS-39 are more than welcome to abide by.

ii. COMPANIES ACT, 2017 (INCLUDING AMENDMENTS MADE THROUGH COMPANIES (AMENDMENT) ORDINANCE, 2020) IN TRACK CHANGE.

The SECP, after review and consultation with the help of other stakeholders, including Institute of Chartered Accountants of Pakistan, Pakistan Business Council, Institute of Cost & Management Accountants of Pakistan, Overseas Investors Chamber of Commerce & Industry and Pakistan Institute of Corporate Governance, proposed changes to be made in the present Companies Act 2017 in order to promote and facilitate startups in Pakistan and to neutralize the after effects of the novel COVID-19.

The President of Pakistan approved the proposed amendments in the Companies Act 2017 on 30th April 2020. The amendment was promulgated as the Companies (Amendment) Ordinance, 2020. The track changes version of the amendment is available on the website given below:

<https://www.secp.gov.pk/document/companies-act-2017-including-amendments-made-through-companies-amendment-ordinance-2020-in-track-change/>

and that no new case may be fixed for hearing from 26.03.2020 to 24.04.2020.

xi. OFFICE ORDER (MINISTRY OF LAW) TO AVOID THE CORONAVIRUS

The Ministry, vide its letter no. F.No. 1(27)/2015-A-IV, dated 25th March 2020, has directed that no adverse orders may be passed due to non-appearance of any party, lawyer or authorized representative(s), in any case fixed for hearing before Customs Appellate Tribunal or Appellate Tribunal Inland Revenue (ATIR), with immediate effect.

xii. APPELLATE TRIBUNAL SINDH REVENUE BOARD CIRCULAR TO AVOID CORONA (COVID-19)

The Appellate Tribunal of SRB has issued a letter bearing no. AT/SRB/COVID-19/Circular/2020, dated 24th March 2020, and has directed that:

- The regular work of the Tribunal with respect to hearing of appeals shall remain suspended for fourteen (14) days, with effect from 24.03.2020 to 07.04.2020.
- The appeals shall be received daily, during working days, from 09:00 a.m. to 02:00 p.m.
- The Chairman/Technical Member of the Tribunal would be available in the office for attending urgent work from 10.00 am to 02.00 pm,
- The appeals will be taken up during the above suspended period on the basis of urgent application which would be enclosed with affidavit disclosing the reason for urgency.

2. CORPORATE NOTIFICATIONS/ CIRCULARS

i. SRO 145 (I)/2020 (dated 28th February 2020)

The captioned SRO was issued by the Securities Exchange Commission of Pakistan. The said SRO notified certain amendments that were earlier made, to the Association with Charitable and not for Profit Objects Regulations 2018, through SRO 48(I)/2020 dated 27th January 2020.

The crux of the amendment is that each of the

promoters, directors, chief executive officer and members of the association, shall meet the fit and proper criteria as provided in these regulations.

ii. SRO 141 (I)/2020 (dated 28th February 2020).

The SECP, through the captioned SRO, has published the proposed draft amendments in the Auditors (Reporting Obligations) Regulations 2018. By virtue of the said SRO, the SECP has proposed certain changes in the "independent auditor's report" that have to be submitted by companies.

Under the above-mentioned regulation, companies are required to submit the auditor's report on consolidated financial statements.

iii. SRO 173 (I)/2020 (dated 5th March 2020).

The SECP has, through the captioned SRO, issued draft amendments to the Real Estate Investment Trust Regulations 2015.

The SECP has introduced the concept of "Developmental Infrastructure REIT Scheme" which is established for investment, development and construction in infrastructure real estate.

iv. SRO 231(I)/2020 (dated 16th March 2020)

The SECP, through the captioned SRO, has finalized the draft amendments issued through SRO 33 of 2020.

These regulations will be applicable to companies issuing further capital by way of:

1. right shares;
2. other than right shares;
3. bonus shares;
4. employee stock option schemes; and
5. Shares with different rights including preference shares.

The aforesaid regulations, finalized through the captioned SRO, will be termed as the 'Companies (Further Issue of Shares) Regulations 2020'.

3. TAX YEAR CANNOT BE SPLITTED FOR DETERMINING EXCLUSIVE TAXABLE INCOME

In *“FBR through chairman, Islamabad etc. vs M/s Wazir Ali and Company etc., Shahid Aziz Zahidi and others” (2020 SLD 695)*, the question of law mainly revolved around chargeability of surcharge under Section 4A of Income Tax Ordinance 2001 (“the Ordinance”). Section 4A was inserted in Tax Year 2011 through the Income Tax (Amendment) Ordinance 2011, dated 16.03.2011, and through this amendment a surcharge of 15% was levied on the income tax paid or payable for the tax year 2011. The FBR, however, issued Circular 11 of 2011, dated 12.09.2011, whereby the tax liability for the entire Tax Year 2011 was not subjected to the surcharge, and it was levied on the proportionate liability for a period of 31/2 months from 16th March 2011 to 30th June 2011. Realizing FBR’s lack of power to exempt income, the Federal Government, through SRO 977(I)/2011, dated 19.01.2011, added Clause 11 in Part III of the Second Schedule to the Ordinance to give effect to the same. The taxpayer, being a partnership firm engaged in the business of importing goods and selling them in the local market, instead paid advance tax at the import stage under Section 148 of the Ordinance, which was its final liability for that tax year. It challenged the aforesaid Circular issued by the FBR before the Sindh High Court (“SHC”), contending that the surcharge can only be computed on such liability that exclusively pertained to the income derived in the 31/2 months, and that the advance income tax paid at the import stage for whole of the tax year 2011 should not be proportionately broken down into three and half months, instead the advance tax paid in the last three and half months of the tax year 2011 that is, from 16 March 2011 to 30 June 2011 should be considered.

The SHC held that the wordings of Section 4A of the Ordinance do not suggest proportionate determination of tax liability for the entire tax year and, henceforth, decided the case on the principle that when two

interpretations of a charging provision are reasonably possible, the one favouring the taxpayer is to be preferred and adopted. Since, in this case the taxable income during these 31/2 months was lower than average of other 81/2 months and beneficial for taxpayer, the case was decided in favour of the taxpayer, and only that portion of income tax was allowed to be taken to calculate surcharge that was actually earned in last three and half month of the tax year for which the law was enforced. Being aggrieved of the decision of the SHC, the FBR appealed the decision before the Supreme Court of Pakistan (“SCP”).

The SCP annulled the Order passed by the SHC, whilst observing that since Section 4A begins with ‘subject to this Ordinance’, it is bound by the scheme of the Ordinance in terms of computing the taxable income and not overriding the scheme thereof. In that sense, the scheme - consisting of Sections 4(1), 74, 114 and 115 of the Ordinance - prohibit the splitting of a tax year, and it is not lawful that a person’s income in a tax year can be divided into separate periods. The wordings of the above sections of the Ordinance do not suggest in any case the splitting of income within a single tax year. Section 4A and the Ordinance itself, do not provide an option to split income into two separate periods in a single tax year. The SHC’s interpretation, that was beneficial to taxpayer, was not correct in this case as it will not be applicable universally, as situations arising with regards to other taxpayers whose income in these 31/2 months was/is more, will require another interpretation. This will create an anomalous situation, and the interpretation will have to be changed for it to be beneficial to the taxpayer. The Courts cannot put forth two separate interpretations of the same provision of law on the principle of beneficial interpretation; the first being beneficial to one set of taxpayers, the second preferring another set of taxpayers. In conclusion, surcharge under Section 4A should have been computed as under:

$$A * 3^{1/2} * 15\%$$

Where, A is total taxable income of Tax Year 2011.

4. TOPIC OF THE MONTH

- ASSESSMENT OF TAX

A. PREAMBLE

The current government has emphasized on evolving the tax framework in Pakistan, in order to meet the overly ambitious demands set by the International monetary Funds (“IMF”). This has driven the FBR to promote a culture of mass assessment of income in order to regularize an efficient tax collection and assessment system.

B. TYPES OF ASSESSMENT

i. SELF-ASSESSMENT

The term Assessment as per the Ordinance, relates to a return of income, filed by a taxpayer, with the exception of a revised tax return, that is to be treated as assessment of taxable income for that tax year by the Commissioner of income.

This is called Self-Assessment by the taxpayer with following features:

- No assessing officer will determine taxpayer’s income and compute tax liability. Taxpayer will itself declare income and determine tax liability.
- Income tax return shall be accepted without any conditions. There will be no compulsory enhancement of tax liability over previous year to qualify for acceptance.
- Filing of Return will itself be an assessment order and eligibility for refund will flow from tax return.

There are certain conditions prescribed under the Ordinance according to which the Assessment of taxable income is considered as a complete assessment. The conditions are as follows:

The return filed by a taxpayer should;

1. Be in the prescribed form;
2. Be duly signed (not required in online submission);

3. State the prescribed information together with a declaration of the records kept;
4. Be in the context of business, copy of accounts and any other prescribed documents are to be furnished;
5. Be accompanied with evidence of payment of the tax due as per return of income;
6. Accompanied with a wealth statement and wealth reconciliation statement(in case of individual); and
7. Accompanied with foreign income and assets as required under Section 116A of the Ordinance.

In case of an incomplete assessment, the Commissioner is bound to issue a notice within **180 days** from the end of the financial year, in which the incomplete or defected return has been filed. In case of non-compliance of the notice, the return filed would be treated as invalid as if no return has been filed by the taxpayer.

ii. BEST JUDGMENT ASSESSMENT

The best judgment assessment is also termed as an ‘ex-parte assessment’ by Commissioner.

In case the taxpayer fails to do either of the following:

- Furnish income tax return in response to a notice issued by a Commissioner;
- File a statement for FTR;
- File a wealth statement; or
- Produce accounts, documents, and records required to be maintained under section 174 or any other documents that the Commissioner or special audit panel may have required.

The commissioner is empowered under Section 121 of the Ordinance to make an income tax assessment based on the information available and to the best of his judgment. The order will indicate; taxable income, any tax which is due or paid and the time, manner and forum to appeal the assessment order.

The Best Judgment Assessment order can be issued within 5 years after the end of the tax year to which it relates. Although, if an individual hasn’t filed any return in the last 5 years, then the Commissioner **may** issue a

notice to file an income tax return for any of the last 10 years and in this case, the best judgment assessment order, if required, may be passed within 2 years from the end of the tax year in which the notice was issued.

iii. AMENDMENT OF ASSESSMENT

Amendment of Assessment is also termed as re-opening of assessment or additional assessment.

The Commissioner has the powers to amend the previously passed out assessment order under section 122 of the Ordinance, if he deems necessary to make sure that the taxpayer is liable for the correct amount of tax.

An assessment can **only** be amended within 5 years from the issuance of the original assessment order.

The original assessment can be amended or further amended in the circumstances where assessment order is prejudicial to the interest of revenue or Ordinance has incorrectly been applied in the original assessment including:

- Misclassification of income under a head of income;
- Incorrect payment of tax with the return of income; or
- Incorrect claim for any tax relief, exemption or refund.

The Commissioner can also amend the assessment if he has definite information that the income declared is incorrect including concealment of income or furnishing of inaccurate particulars. The **definite information** can pertain to

- Taxable sales, purchases, services and other receipts;
- Acquisition of any asset or investment made;
- Expenditure incurred.

The Commissioner is empowered to make further amendments to the amended assessment order, as many times as he deems necessary.

iv. PROVISIONAL ASSESSMENT

The Commissioner can make provisional assessment under Section 123 of the Ordinance, where a concealed

asset, including offshore asset(s), of a person is confiscated by any government agency, which according to the commissioner was acquired from taxable income. Although the commissioner should finalize the provisional assessment order as soon as possible.

v. REVISION BY THE COMMISSIONER

The Commissioner is empowered to call for the record of any proceedings in which an order was passed by any authority sub-ordinate to him for making an inquiry on its own motion or on an application made by the taxpayer for revision u/s 122A of Ordinance. The Commissioner may revise any order passed by any Officer of Inland Revenue if the assessment is not under any appeal and will not enhance income under this section.

C. TOOLS TO ENSURE EFFECTIVE WORKING OF SELF ASSESSMENT SCHEME

Self-Assessment scheme envisages that certain number of cases are to be subjected to detailed scrutiny. The main purpose of this detailed scrutiny is to ensure that the trust reposed by the department in the taxpayers through SAS is not misused. This scrutiny is intended to provide deterrence.

D. AUDIT BY COMMISSIONER UNDER SECTION 177 AND SELECTION FOR AUDIT BY THE FBR (SECTION 214C)

The Commissioner under Section 177 of the Ordinance, has the power to call for accounts, records and information of any person, for the previous 6 years, to conduct audit.

The Commissioner can access any medium where data is available for the purpose of investigation and audit.

The issues raised in the audit will be then explainable by the taxpayer, after which the Commissioner **may** amend the assessment if necessary.

The FBR may select any person for audit of Income Tax affairs through computer ballot which may be random or parametric as the FBR may deem fit under section 214C.

Powers of Commissioner under section 177 are independent of the powers of the FBR and therefore

selection for audit by FBR will not restrict the powers of the Commissioners to call for audit.

(i) FORMATION OF SPECIAL AUDIT PANEL BY THE FBR.

In case of selection of audit by FBR, the FBR may appoint an audit panel which can consist of 2 or more members from the following:

- Any officer of Inland Revenue;
- A firm of Chartered Accountants;
- A firm of cost and management accountants; or
- Any other person including a foreign expert or specialist as directed by the FBR.

The panel will be chaired by the selected Officer of Inland Revenue, with any of the members selected from above to be a part of the panel. In case of absence of any of the member, other than the Chairman itself, the audit proceedings will be considered valid and cannot be called in question on the basis of such ground.

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